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SENATE BILL 519

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO NUISANCE ORDINANCES; RAISING CERTAIN NUISANCE VIOLATION PENALTIES AND FEES; ESTABLISHING PROCEDURE FOR CHALLENGES TO THE IMPOSITION OF PENALTIES FOR THE VIOLATION OF CERTAIN NUISANCE ORDINANCES; PROVIDING FOR DISTRIBUTION OF PENALTIES AND FEES; REQUIRING AN AUDIT; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-18-17 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-17-14, as amended) is amended to read:

"3-18-17. NUISANCES AND OFFENSES--REGULATION OR PROHIBITION.--A municipality, including a home rule municipality that has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico, may by ordinance:

A. define a nuisance, abate a nuisance and impose

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1 penalties upon a person who creates or allows a nuisance to  
2 exist; provided that [~~for a municipality with a population of~~  
3 ~~200,000 or greater as of the last decennial census the~~  
4 ~~penalties or fines and costs or fees imposed by an ordinance~~  
5 ~~for failure to obey a traffic sign or signal, including a red~~  
6 ~~light violation, or for a speeding offense or violation shall~~  
7 ~~be subject to the following criteria]:~~

8 (1) the total amount of assessed penalties,  
9 fines, fees and costs [~~for each offense or violation]~~ imposed  
10 by an ordinance for failure to obey a traffic sign or signal,  
11 including a red light offense or violation, or for a speeding  
12 offense or violation shall not exceed [seventy-five dollars  
13 ~~(\$75.00)] one hundred dollars (\$100), provided that the total~~  
14 for unlawful parking in a space or for blocking an access  
15 intended for persons with significant mobility limitation shall  
16 not be less than or exceed the fines provided in Section  
17 66-7-352.5 NMSA 1978;

18 (2) in a municipality with a population of two  
19 hundred thousand or greater as of the last federal decennial  
20 census, the penalties, fines, fees, costs and procedure imposed  
21 for failure to obey a traffic sign or signal, including a red  
22 light offense or violation, or for a speeding offense or  
23 violation shall be subject to the following:

24 [~~2~~] (a) each month, or other period  
25 set by contract, the municipality shall retain from the gross

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1 total amount of penalties, fines, fees and costs assessed and  
2 collected that month or period an amount subject to audit that  
3 is equal to the sum of the setup, maintenance, support and  
4 processing services fees charged for that month or period  
5 pursuant to contractual terms by a vendor providing systems and  
6 services that assist the municipality in imposing penalties or  
7 fines and costs or fees as provided in Paragraph (1) of this  
8 subsection;

9 [~~(3)~~] (b) less the retention authorized  
10 in [~~Paragraph (2) of this subsection~~] Subparagraph (a) of this  
11 paragraph: 1) one-half of the net total amount assessed in  
12 penalties, fines, fees and costs by the municipality shall be  
13 remitted to the state treasurer and distributed to the  
14 administrative office of the courts, of which ten percent [of  
15 the net total amount assessed] shall be credited to DWI drug  
16 court programs and ninety percent [~~of the net total amount~~  
17 ~~assessed~~] shall be transferred to the New Mexico finance  
18 authority for deposit into the metropolitan court bond  
19 guarantee fund; and 2) one-half shall be retained by the  
20 municipality for municipal traffic safety programs and to  
21 offset the municipality's reasonable costs directly related to  
22 administering a program imposing penalties or fines and costs  
23 or fees as provided in Paragraph (1) of this subsection;

24 [~~(4)~~] (c) in fiscal year 2009, and  
25 annually thereafter, the municipality shall cause an audit of

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1 the program and contract described in Subparagraph (a) of this  
2 paragraph to be conducted by the state auditor or an  
3 independent auditor selected by the state auditor;

4 (d) if in the audit conducted pursuant  
5 to Subparagraph (c) of this paragraph it is determined that any  
6 amount retained by the municipality pursuant to this paragraph  
7 is in excess of the amount the municipality is authorized to  
8 retain, the municipality shall remit, when the audit is  
9 finalized, the amount in excess to the state treasurer to be  
10 distributed and transferred as provided in Item 1) of  
11 Subparagraph (b) of this paragraph; and

12 (e) a hearing provided for a contested  
13 nuisance ordinance offense or violation shall be held by a  
14 hearing officer appointed by the presiding judge of the civil  
15 division of the district court with jurisdiction over the  
16 municipality, and the hearing itself shall be conducted  
17 following the rules of evidence and civil procedure for the  
18 district courts. The burden of proof for violations and  
19 defenses is a preponderance of the evidence. A determination  
20 by the hearing officer shall not impose a total amount of  
21 penalties, fines, fees and costs in excess of that provided in  
22 the nuisance ordinance; and

23 (3) in a municipality other than a  
24 municipality with a population of two hundred thousand or  
25 greater as of the last federal decennial census, the penalties,

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1 finances, fees, costs and procedure imposed for failure to obey a  
2 traffic sign or signal, including a red light offense or  
3 violation, or for a speeding offense or violation shall be  
4 subject to the following:

5 (a) each month, or other period set by  
6 contract, the municipality shall retain from the gross total  
7 amount of penalties, fines, fees and costs assessed and  
8 collected that month or period an amount subject to audit that  
9 is equal to the sum of the setup, maintenance, support and  
10 processing services fees charged for that month or period  
11 pursuant to contractual terms by a vendor providing systems and  
12 services that assist the municipality in imposing penalties or  
13 fines and costs or fees as provided in Paragraph (1) of this  
14 subsection;

15 (b) less the retention authorized in  
16 Subparagraph (a) of this paragraph: 1) one-half of the net  
17 total amount assessed in penalties, fines, fees and costs by  
18 the municipality shall be remitted to the state treasurer, of  
19 which sixty-five percent shall be credited to the court  
20 automation fund, twenty percent to the traffic safety education  
21 and enforcement fund and fifteen percent to the judicial  
22 education fund; and 2) one-half of the net total amount  
23 assessed in penalties, fines, fees and costs shall be retained  
24 by the municipality for municipal traffic safety programs and  
25 to offset the municipality's reasonable costs directly related

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1 to administering a program imposing penalties or fines and  
2 costs or fees as provided in Paragraph (l) of this subsection;

3 (c) in fiscal year 2009, and annually  
4 thereafter, the municipality shall cause an audit of the  
5 program and contract described in Subparagraph (a) of this  
6 paragraph and the money collected and distributed pursuant to  
7 this paragraph to be conducted by the state auditor or an  
8 independent auditor selected by the state auditor;

9 (d) if in the audit conducted pursuant  
10 to Subparagraph (c) of this paragraph it is determined that any  
11 amount retained by the municipality pursuant to this paragraph  
12 is in excess of the amount the municipality is authorized to  
13 retain, the municipality shall remit, when the audit is  
14 finalized, the amount in excess to the state treasurer to be  
15 distributed and transferred as provided in Item l) of  
16 Subparagraph (b) of this paragraph; and

17 (e) a hearing provided for a contested  
18 nuisance ordinance offense or violation shall be held by a  
19 hearing officer appointed by the presiding judge of the civil  
20 division of the district court with jurisdiction over the  
21 municipality, and the hearing itself shall be conducted  
22 following the rules of evidence and civil procedure for the  
23 district courts. The burden of proof for offenses or  
24 violations and defenses is a preponderance of the evidence. A  
25 determination by the hearing officer shall not impose a total

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1 amount of penalties, fines, fees and costs in excess of that  
2 provided in the nuisance ordinance;

3 B. regulate or prohibit any amusement or practice  
4 that tends to annoy persons on a street or public ground; and

5 C. prohibit and suppress:

6 (1) gambling and the use of fraudulent devices  
7 or practices for the purpose of obtaining money or property;

8 (2) the sale, possession or exhibition of  
9 obscene or immoral publications, prints, pictures or  
10 illustrations;

11 (3) public intoxication;

12 (4) disorderly conduct; and

13 (5) riots, noises, disturbances or disorderly  
14 assemblies in any public or private place."

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